

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ESSEX W. BAILEY,

Plaintiff,

Case No. 1:11-cv-1170

v

HON. JANET T. NEFF

MICHIGAN DEPARTMENT OF
CORRECTIONS *et al.*,

Defendants.

_____ /

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983, alleging a violation of the Eighth Amendment arising out of Plaintiff's medical treatment for a heart attack he suffered in February 2011 (Dkt 1). Defendant Prison Health Services, Inc. filed a motion for summary judgment. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R), recommending that this Court grant Defendant's motion. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (Dkt 36). Defendant Prison Health Services has filed a response (Dkt 37). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff raises two objections to the Magistrate Judge's Report and Recommendation. Both are without merit.

Plaintiff's first objection reiterates his claim that Defendant denied him a medical procedure critical for keeping him alive and that a treating physician advised "him he could die if he did not receive bypass surgery" (Dkt 31 at 2; Dkt 36 at 2, citing Dkt 32 ¶ 4). Plaintiff asserts that he can produce other evidence of his need for heart bypass surgery, including documents obtained from an on-line investigative source indicating that cardiac patient outcome may be better with bypass surgery than with stents (Dkt 36 at 2). Plaintiff's objection does not undermine the Magistrate Judge's analysis or conclusion.

The Magistrate Judge properly concluded based on the record that "Plaintiff cannot establish that he received inadequate or insufficient medical care" (Dkt 35 at 5). Plaintiff has failed to point to any evidence that he was treated with deliberate indifference. The facts he cites show nothing more than a difference of medical opinion. Furthermore, he does not dispute that he received an alternative procedure to bypass surgery. Because Plaintiff has failed to establish any facts that could rise to the level of deliberate indifference, this objection is denied.

Read generously, Plaintiff's second objection is that Defendant Prison Health Services has a policy, practice, or custom of placing "their own greed for monetary gain above the medical needs of the patients" (Dkt 36 at 3). As evidence of this, Plaintiff again references the prison health care policies he attached to his Response to Defendant's Motion for Summary Judgment (Dkt 31, Exs. A and B). Contrary to Plaintiff's assertions, the policies are not evidence of "obscene health care practices" or his above claim (*see* Dkt 36 at 3). Because Plaintiff has not established that a Prison Health Services policy, practice, or custom violated his Constitutional rights, this objection is also denied.

The Magistrate Judge properly determined that “Plaintiff has presented no evidence which, even if believed, would establish that he suffered any cognizable injury in this matter let alone an injury resulting from a Prison Health Services policy, practice, or custom” (Dkt 35 at 6). Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that the Objections (Dkt 36) are DENIED and the Report and Recommendation (Dkt 35) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (Dkt 22) is GRANTED.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Dated: February 26, 2013

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge